Argued
Jany 19-83 Judge Davis
23

Affirmed
Judge Strong Dissents

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~423.~~ 207

THE TOWN OF QUEENSBURY, PLAINTIFF IN ERROR,

VS.

ISAAC B. CULVER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 19, 1872.

1 vol 5th Edition Revised
Statutes art 10 Sec 2
p 69

SUPREME COURT OF THE UNITED STATES

No. 423.

THE TOWN OF QUEENSBURY, PLAINTIFF IN ERROR,

VS.

ISAAC B. CULVER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Declaration	5	1
Plea	43	16
Verdict	44	17
Order granting defendant time to serve case, &c	45	17
Order denying motion for new trial	49	18
Order staying proceedings, &c	51	18
Bill of exceptions	53	18
Judgment	85	30
Writ of error	87	30
Bond	91	31
Citation	95	32
Clerk's certificate	97	33

4 In the circuit court of the United States for the northern district of New York.

Pleas before the judges of the circuit court of the United States for the northern district of New York, at the city of Utica, at the March term of said court, held at said city, on the 3d Tuesday of March, A. D. 1870.

Witness the honorable Lewis B. Woodruff, one of the judges of said court.

AUGUSTUS A. BOYCE, *Clerk.*

NORTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that, heretofore, to wit, at the March term of the
circuit court of the United States for the northern district of New
5 York, held at Utica, in the said district, before the judges of the
said court, by declaration filed and served in *in* a plea of trespass
on the case, Isaac B. Culver brought suit against the town of Queensbury, in this court, in the northern district of New York; and thereupon the said Isaac B. Culver, plaintiff, declared against the said The Town of Queensbury as follows, to-wit:

Circuit court of the United States for the second circuit and the northern district of New York. Of March (adjourned) term, to wit, the 13th day of April, in the year one thousand eight hundred and seventy.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Isaac B. Culver, who is a citizen of the State of New Jersey, complains of the town of Queensbury, a municipal corporation of the State of New York, in the said northern district of New York, in custody, &c., for that, whereas the said defendant, the town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said
northern district of New York, made, executed, and delivered
6 to the Glen's Falls Railroad Company an instrument in writing,
in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 92, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the said defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterwards the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

Second Count.—And whereas, also, the said defendant, The Town of
Queensbury, on the 6th day of February, 1859, at Queensbury,
7 Warren County, in said northern district of New York, made,
executed, and delivered to the Glen's Falls Railroad Company a
certain other instrument in writing, in the words and figures following,
viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 93, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. Ketchum, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said
instrument was, for value, transferred and delivered to said plaintiff, of
which said transfer and delivery the said defendant had notice, by
means whereof the said defendant became liable to pay said plaintiff,
and, being so liable, the defendant then and there promised to pay to
said plaintiff the amount of said instrument, according to the terms and
effect thereof, whenever afterward the defendant should be thereto re-
quested; yet the defendant has disregarded the said promise
8 and hath not paid the said or any part thereof, to the plaint-
iff's damage of one hundred dollars.

Third Count.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company, a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 94, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. Ketchum, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said
instrument was, for value, transferred and delivered to said plaintiff, of
which said transfer and delivery the said defendant had notice, by
means whereof the said defendant became liable to pay said plaintiff, and,
being so liable, the defendant then and there promised to pay to said
plaintiff the amount of said instrument, according to the terms
9 and effect thereof, whenever afterward the defendant should be
thereto requested; yet the defendant has disregarded the said
promise and hath not paid the said sum or any part thereof, to the
plaintiff's damage of one hundred dollars.

Fourth Count.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 109, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which transfer and delivery the said defendant had notice, by
10 means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

FIFTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company an instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 121, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said
11 instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the said defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the said defendant should be thereto requested; yet the defendant has disregarded the said promise, and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

SIXTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1859, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 123, due February 6, 1870.

12

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

SEVENTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

13 "Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 138, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

EIGHTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed,
14 and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 139, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the said defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

15 NINTH COUNT.—And whereas, also, the said defendant *defendant*, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company an instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 140, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be there requested;
16 yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

TENTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1859, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 141, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff,
and, being so liable, the defendant then and there promised to pay
17 to said plaintiff the amount of said instrument, according to the
terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

ELEVENTH COUNT.—And whereas also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 142, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of
which said transfer and delivery the said defendant had notice,
18 by means whereof the said defendant became liable to pay said
plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

TWELFTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 143, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

19 That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

THIRTEENTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company an instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 144, due February 6, 1870.

20 "H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

FOURTEENTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1859, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz: 21

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Fall's National Bank: Pay to bearer seventy dollars, interest on bond No. 145, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

FIFTEENTH COUNT.—And whereas, also, the said defendant, The
Town of Queensbury, on the 6th day of February, 1869, at Queens-
22 bury, Warren County, in the said northern district of New York,
made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 146, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto
requested; yet the defendant has disregarded the said promise
23 and hath not paid the said sum or any part thereof, to the plaint-
iff's damage of one hundred dollars.

SIXTEENTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 149, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to
24 pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum, or any part thereof, to the plaintiff's damage of one hundred dollars.

SEVENTEENTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company an instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 150, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaint-
25 iff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterwards the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

EIGHTEENTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1859, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 151, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

26 That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

NINETEENTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 152, due February 6, 1870.

27
"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value*d*, transferred and delivered to said plaintiff, ot which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet this defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

TWENTIETH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain
28 other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 153, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. Ketchum, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

29 Twenty-first Count.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company an instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 160, due February 6, 1870.

"H. R. WING.
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. Ketchum, *Town-Clerk.*"

That afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be there-
30 to requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

Twenty-second Count.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1859, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 161, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, 31 by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

TWENTY-THIRD COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 162, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

32 That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

TWENTY-FOURTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

33 "Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 163, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

TWENTY-FIFTH COUNT.—And whereas, also, the said defendant, The
Town of Queensbury, on the 6th day of February, 1869, at Queensbury,
Warren County, in the said northern district of New York, made,
34 executed, and delivered to the Glen's Falls Railroad Company
an instrument in writing, in the words and figures following,
viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 164, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

35 TWENTY-SIXTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1859, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 165, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and
effect thereof, whenever thereafter the defendant should be
36 thereto requested; yet the defendant has disregarded the said
promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

TWENTY-SEVENTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 166, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of
which said transfer and delivery the said defendant had notice,
37 by means whereof the said defendant became liable to pay said
plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

TWENTY-EIGHTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 167, due February 6, 1870.

"H. R. WING,
"DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the
38 said instrument was, for value, transferred and delivered to said
plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

TWENTY-NINTH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 6th day of February, 1869, at Queensbury, Warren County, in the said northern district of New York, made, executed, and delivered to the Glen's Falls Railroad Company a certain other instrument in writing, in the words and figures following, viz:

"TOWN OF QUEENSBURY—INTEREST-WARRANT.

"Glen's Falls National Bank: Pay to bearer seventy dollars, interest on bond No. 168, due February 6, 1870.

"H. R. WING,
39 "DAN'L PECK,
"W'M A. WAIT,
"*Commissioners.*

"D. B. KETCHUM, *Town-Clerk.*"

That, afterwards, to wit, on the 29th day of June, 1869, the said instrument was, for value, transferred and delivered to said plaintiff, of which said transfer and delivery the said defendant had notice, by means whereof the said defendant became liable to pay said plaintiff, and, being so liable, the defendant then and there promised to pay to said plaintiff the amount of said instrument, according to the terms and effect thereof, whenever afterward the defendant should be thereto requested; yet the defendant has disregarded the said promise and hath not paid the said sum or any part thereof, to the plaintiff's damage of one hundred dollars.

THIRTIETH COUNT.—And whereas, also, the said defendant, The Town of Queensbury, on the 9th day of February, 1870, at the town of Queensbury, in the county of Warren, in the said northern district of New York, was indebted to the said plaintiff in the further sum of five thousand dollars, lawful money of the United States, for so much
40 money before that time lent and advanced by the said plaintiff
to the said defendant, at the special instance and request of said defendant; and for other money by the said plaintiff before that time

paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of said plaintiff;

And, being so indebted, the said defendant, in consideration thereof, afterward, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant, although often requested, &c., hath not yet paid the said several sums above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but the said defendant hath hitherto altogether refused, to the damage of the said
41 plaintiff of five thousand dollars; and therefore the said plaintiff brings suit, &c.

L. H. NORTHRUP,
Attorney for Plaintiff.

(Endorsed:) U. S. circuit court, northern dist. of New York. Isaac B. Culver ag'st The Town of Queensbury. Copy narr. L. H. Northrup, pl'ff's att'y, Sandy Hill, Washington County, N. Y.

To the defendant above named:

Take notice that you are required to plead to the declaration in this cause, of which the within is a copy, & which is filed in the office of the clerk of this court, at Utica, within 20 days after service of the same and of this notice.

Dated April 14, 1870.
Yours, &c.,

L. H. NORTHRUP, *Pl'ff's Att'y.*

42

43 Circuit court of the United States, 2nd circuit and northern district of New York.

ISAAC B. CULVER
against
THE TOWN OF QUEENSBURY.

And the said defendant, The Town of Queensbury, by W. and J. D. Kernan, its attorneys, comes and defends the wrong and injury, when, &c., and saith that the said defendant, The Town of Queensbury, did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it; and of this the said defendant puts itself upon the country, &c.

W. AND J. D. KERNAN,
Def't's Att'ys.

L. H. NORTHRUP, Esq.

SIR: Take notice that we are retained as attorneys for the defendant in the within-entitled action, and have caused our appearance to
44 be entered therein, as such attorneys, with the clerk of said court, at Utica. Also take notice that within is a copy of the

plea in said action, which has been duly filed and posted with the clerk of said court, at Utica.

May 2, 1870.

Yours, &c.,

W. & J. D. KERNAN,
Def't's At'n'ys, Utica, N. Y.

And thereupon the *the* process thereof is continued between the parties aforesaid of the plea aforesaid in this same court, before the judges thereof, and the issue above joined is ordered by the said court to be tried at the term of this court appointed to be held at the village of Canandaigua, on the 23rd day of June, 1870, at which day and place last aforesaid came the parties aforesaid, by their attorneys aforesaid, before the judges of the said court; and the jurors of the jury summoned to try the said issue being called, also came, who, to speak the truth of the matters aforesaid, being chosen, tried, and sworn, 45 say, upon their oath, that the said defendant is guilty of the premises above laid to its charge in manner and form as the said plaintiff hath above complained against *him*, and they assess the damages of said plaintiff, by reason of the premises, over and above his costs by him about his suit in this behalf expended, to two thousand and eighty-three dollars and twenty-nine cents, and costs.

June term of the United States circuit court for N. D. of N. Y., June 23, 1870.

Present, Hon. L. B. Woodruff, judge.

Isaac B. Culver
ag'st
The Town of Queensbury.

46 The court having ordered a verdict in favor of the plaintiff for $2,083.29, on motion of F. Kernan, counsel for the defendant, ordered that the defendant have 60 days to make & serve a case, and the plaintiff 60 days to serve amendments thereto, & that all proceedings on the verdict be stayed until said case is settled & a motion for a new trial thereon be made & decided; and it is further ordered that either party have leave to turn said case into a bill of exceptions.

L. B. WOODRUFF,
Circuit J.

(Endorsed:) U. S. circuit court. Isaac B. Culver vs. The Town of Queensbury. W. & J. D. Kernan, def't's att'y. Filed June 23, 1870.

47 And the said cause was continued down to the March term of said circuit court, held at the city of Utica, on the 3d Tuesday of March, A. D. 1871, Hon. Lewis B. Woodruff, presiding judge, at which time and place the said cause came on for a hearing upon a motion for new trial on a case; and because the said judge now here is not yet advised what judgment to give, the said cause is continued until the third Tuesday of June of the June term of said court, A. D. 1871, at the court-house in the village of Canandaigua, and the same day is given to the parties aforesaid, at the same place, to hear the judgment of the said court thereon: At which said last-mentioned day before the said judge, at the place last aforesaid, come the parties aforesaid, by their

respective attorneys, and an order is entered in the words and figures following, to wit:

49 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the village of Canandaigua, the 3rd Tuesday of June, in the year of our Lord one thousand eight hundred and seventy-one—

Present, the Honorable Lewis B. Woodruff, judge.

Isaac B. Culver
vs.
The Town of Queensbury.

This cause having come on for a hearing at the March term of said circuit court, held at the city of Utica, on the 3rd Tuesday of March, A. D. 1871, upon motion for a new trial upon a case, and having been argued by the counsel for the respective parties, and the court having considered the same, ordered that the said motion be, and the same is hereby, denied.

(A copy as entered.)

Witness my hand and official seal, at my office in Utica, this 30th day of January, A. D. 1872.

[SEAL.] CHARLES MASON, *Clerk.*

50

51 At a term of the circuit court of the United States for the northern district of New York, held at Canandaigua the 23rd day of June, 1871—

Present, Hon. L. B. Woodruff, justice, presiding.

United States circuit court, northern district of New York.

Isaac B. Culver
vs.
The Town of Queensbury.

On reading & filing the affidavits of Francis Kernan, attorney & counsel for the defendant in this action, & the case settled herein, it is hereby ordered that the said defendant herein have thirty days to prepare & serve a proposed bill of exceptions herein, or to turn said case into a bill of exceptions, & that the plaintiff have a like time to prepare and serve amendments thereto; & it is further ordered that in the mean time, & until such bill of exceptions be settled & filed, judgment & all proceedings on the verdict in this action be, & the same are hereby, stayed. 52

Dated and given at Canandaigua this 23rd day of June, 1871.

L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) U. S. circuit court, north. dist. of N.Y. Isaac B. Culver vs. The Town of Queensbury. Order. Filed June 23, 1871.

53 *Bill of exceptions.*

U. S. circuit court in and for the northern district of New York.

Isaac B. Culver
vs.
The Town of Queensbury.

This cause was duly continued to the term of this court appointed to be held at the court-house in Canandaigua, in and for said district, on the third Tuesday of June, 1870.

And afterwards, at the time and place last mentioned, and at the term last mentioned, to wit, on the 23d day of June, 1870, came the parties aforesaid, by their respective counsel, and the said cause came on to be tried before the honorable Lewis B. Woodruff, judge of said court, and a jury duly empanelled.

And thereupon the plaintiff, to maintain said action, gave the following evidence, viz:

William A. Wait was duly sworn, on the part of the plaintiff, and testified as follows:

I reside at Glenn's Falls, N. Y., and am engaged in the business of banking, and am the cashier of the Glenn's Falls National Bank.

54 Thereupon the counsel for the plaintiff offered and read in evidence a petition addressed to the county judge of the county of Warren, signed by twelve resident freeholders of said town of Queensbury, dated October 8th, 1868, which petition is in the words and figures following, viz:

To the county judge of the county of Warren:

The undersigned, freeholders and residents of the town of Queensbury, in the county of Warren, respectfully apply to you to appoint, under your hand and seal, three freeholders, residents of said town of Queensbury, to be commissioners of such town to carry into effect the purposes of an act of the legislature of the State of New York, passed May 15th, 1867, entitled "An act to authorize the town of Queensbury, in the county of Warren, to issue bonds to aid in the construction of a railroad from the village of Glenn's Falls to intersect the Saratoga and Whitehall Railroad." And your petitioners will ever pray, &c. Dated October 8, 1868.

55

Isaac J. Davis.
John Keenan.
Halsey R. Wing.
Joel B. Green.
Hiram Brown.
W. W. Hicks.
Daniel Peck.

Frank Byrne.
Sam'l Pruyn.
J. W. Finch.
W'm Cosgrove.
M. A. Sheldon.
H. M. Harris.

State of New York,
Warren County, ss:

John Keenan, being duly sworn, says that he was present and saw each of the persons whose name is subscribed to the foregoing instrument sign and subscribe the same.; that each of said subscribers is a resident and freeholder of the town of Queensbury, in said county of Warren.

JOHN KEENAN.

Sworn before me Oct. 12, 1868.

S. BROWN,
County Judge of Warren County.

56 The counsel for the plaintiff also offered and read in evidence an order made by the county judge of Warren County, dated February 4th, 1869, which is as follows:

Twelve or more freeholders, residents of the town of Queensbury, in the county of Warren, having made application to me in writing to appoint under my hand and seal three freeholders, residents of said town, to be commissioners of said town to carry into effect the purposes of an act entitled "An act to authorize the town of Queensbury, in the county of Warren, to issue bonds to aid in the construction of a railroad from the village of Glenn's Falls to intersect the Saratoga and Whitehall Railroad," passed May 15, 1867:

Now, therefore, in pursuance of said statute and application, I do hereby appoint Halsey R. Wing, William A. Wait, and George Brown, esquires, freeholders and residents of said town of Queensbury, commissioners of said town, for the purposes aforesaid.

In witness whereof I have hereunto set my hand and affixed
57 my seal this fourth day of February, 1869, at Glenn's Falls, in
said town & county.

[L. S.] STEPHEN BROWN,
County Judge of Warren County.

It was conceded that said petition and order were produced from the office of the county judge of Warren County.

The witness further testified:

I am the William A. Wait named in the above order.

Question. In February, 1869, was Daniel Peck president of the board of trustees of the village of Glenn's Falls?

(The counsel for the defendant objected to this evidence on the ground that the fact could not be proved by parol evidence; and that the election and appointment of Peck should be proved by the proceedings electing and appointing him.)

The COURT. I will allow testimony that he was then acting as such president.

(The counsel for the defendant excepted.)

COUNSEL FOR THE PLAINTIFF: Question. Was he acting as such
president at that time?
58 And the witness answered: Peck was acting as president at
that time.

Question. At that time was Alexander Robertson acting as supervisor of the town of Queensbury?

(The same objection, ruling, and exception were had as to this question and evidence as last above.)

The witness testified: He was.

Question. At that time was D. B. Ketchum acting as town-clerk of the said town of Queensbury?

(The counsel for the defendant objected to this on the ground that evidence that he acted was not sufficient; and that it should be proved by competent evidence that he was duly elected or appointed.

The court overruled the objection, and admitted the evidence, and the counsel for the defendant excepted.)

The witness answered: He was.

The witness was then shown the 29 instruments or coupons, copies of which are set out in the declaration herein, and testified: These
are all signed in the proper handwriting of the commissioners
59 whose names purport to be signed to the same, and also by the
town-clerk, Mr. Ketchum.

(The same were read in evidence, and copies of the same are set out in the declaration; which declaration is to be deemed a part hereof for the purpose of reference to said copies of coupons.)

I have computed the interest on these instruments or coupons from the 6th day of February, 1870, to date; the amount is $53.29. The amount of the principal of these coupons is $2,0[00].30.

All the commissioners were present at the meeting prior to and at the time these coupons or instruments were signed.

X. On his cross-examination by the defendant's counsel, he testified:

The persons who were present at the meeting I refer to were Alexander Robertson, Daniel Peck, Halsey R. Wing, George Brown, and myself.

There were minutes of their proceedings at this meeting made at the time by me. I acted as secretary.

The counsel for the plaintiff offered and gave the following evidence, viz:

60 The record of the proceedings of the board of town-auditors of the town of Queensbury, held at the office of the town-clerk, on the 18th of May, 1867.

The same was read in evidence as follows:

At a meeting of the town-auditors of the town of Queensbury, held at the office of town-clerk of said town, on the 18th day of May, 1867—present, A. W. Morgan, supervisor; D. B. Ketchum, town-clerk; Carlos Morgan, Robert Stewart, Lyman Jenkins, and Geo. W. Cheeney, justices of the peace—

On motion, resolved that the following notice be adopted and published, to wit:

Railroad election notice.

Pursuant to the 5th section of an act of the legislature of the State of New York, entitled "An act to authorize the town of Queensbury, in the county of Warren, to issue bonds to aid in the construction of a railroad from the village of Glenn's Falls to intersect the Saratoga and Whitehall Railroad," passed May 15, 1867, the board of town-auditors of the town of Queensbury hereby give notice that the question,
whether or not it is expedient to borrow money or issue bonds on
61 the faith and credit of said town of Queensbury in the amount of
$100,000, for the purpose named in said act, will be submitted to the taxable electors of the town of Queensbury, qualified to vote for town-officers, whose names appear on the last general-assessment rolls of said town as having been assessed for real or personal property; which question will be submitted to said qualified taxable electors at a special election; which special election will be held at Union Hall, in the village of Glenn's Falls, on the eleventh day of June next, 1867; that time and place having been designated for holding such special election by the undersigned board of auditors of said town; the polls of which election will be kept open from 9 o'clock a. m. until 6 o'clock p. m. of that day.

Dated Queensbury, the 18th day of May, 1867.

A. W. MORGAN, *Supervisor.*
D. B. KETCHUM, *Town-Clerk.*
CARLOS MORGAN,
ROBERT STEWART,
LYMAN JENKINS,
GEO. W. CHEENEY,
Justices of the Peace.

62 On motion, resolved that the town-clerk be required to post 12 of the foregoing notices in the most conspicuous places in the town of Queensbury.

On motion, resolved that Charles M. Gilchrist, Samuel Jenkins, and George Brown be, and they are hereby, appointed as inspectors of said election.

A. W. MORGAN, *Supervisor.*
D. B. KETCHUM, *Town-Clerk.*
C. MORGAN,
ROBERT STEWART,
LYMAN JENKINS,
GEO. W. CHEENEY,
Justices of the Peace.

Railroad election notice.

Pursuant to the 5th section of an act of the legislature of the State of New York, entitled "An act to authorize the town of Que'nsbury, in the county of Warren, to issue bonds to aid in the construction of a railroad from the village of Glenn's Falls to intersect the Saratoga and Whitehall Railroad," passed May 15th, 1867, the board of town-auditors of the town of Queensbury hereby give notice that the question, whether or not it is expedient to borrow money or issue bonds on
63 the faith and credit of said town of Queensbury in the amount of
$100,000 for the purpose named in said act, will be submitted to the taxable electors of the town of Queensbury, qualified to vote for town-officers, whose names appear on the *the* last general-assessment rolls of said town as having been assessed for real or personal property; which question will be submitted to said qualified taxable electors at a special election; which special election will be held at Union Hall, in the village of Glenn's Falls, on the eleventh day of June next, that time and place having been designated for holding such special election by the undersigned board of auditors of said town; the polls of which election will be kept open from 9 o'clock a. m. until 6 o'clock p. m. of that day.

Dated Queensbury, the 18th day of May, 1867.

A. W. MORGAN, *Supervisor.*
D. B. KETCHUM, *Town-Clerk.*
CARLOS MORGAN,
ROBERT STEWART,
LYMAN JENKINS,
GEO. W. CHEENEY,
Justices of the Peace.

64 Also, the notices of the inspectors of election appointed, and their acceptances, which are as follows:

GEORGE BROWN, Esq.:

At a meeting of board of town-auditors, held at the office of the town-clerk, May 18, 1867, for the purpose of advertising a special election, to be held 11th of June, 1867, to vote on the railroad question, you was appointed as one of the inspectors of election for that day.

Yours,

D. B. KETCHUM,
Town-Clerk.

I hereby accept the appointment.
May 22d, 1867.

GEORGE BROWN.

(Endorsed:) "Filed May 22d, 1867. D. B. Ketchum, town-clerk."

GLENN'S FALLS, N. Y., *May* 18, 1867.

SAMUEL JENKINS, Esq.:

At a meeting of the board of town-auditors, held at the office of the town-clerk, May 18th, 1867, for the purpose of advertising a 65 special election, to be held at Union Hall, June 11th, 1867, to vote on the railroad question, you *was* appointed as one of the inspectors of election for that day.

Yours,

D. B. KETCHUM,
Town-Clerk.

I hereby accept of the appointment.

SAMUEL JENKINS.

(Endorsed:) "Filed May 22d, 1867. D. B. Ketchum, town-clerk."

GLENN'S FALLS, N. Y., *May* 18, 1867.

CHA'S M. GILCHRIST, Esq.:

At a meeting of the board of town-auditors, held at the office of the town-clerk, May 18th, 1867, for the purpose of advertising a special election, to be held at Union Hall, June the 11th, 1867, to vote on the railroad question, you *was* appointed as one of the inspectors of election for that day.

Yours,

D. B. KETCHUM, *Town-Clerk.*

66 I hereby accept the appointment.
May 22d, 1867.

C. M. GILCHRIST.

(Endorsed:) "Filed May 22d, 1867. D. M. Ketchum, town-clerk."

Annexed to the foregoing record is a copy of the Glen's Falls Railroad law. (Chap. 919 of the laws of 1867.)

Also notice of election for the 11th of June, 1867, as follows:

Railroad election notice.

Pursuant to the 5th section of an act of the legislature of the State of New York, entitled "An act to authorize the town of Queensbury, in the county of Warren, to issue bonds to aid in the construction of a railroad from the village of Glen's Falls to intersect the Saratoga and Whitehall Railroad," passed May 15, 1867, the board of town-auditors of the town of Queensbury hereby give notice that the question, 67 whether or not it is expedient to borrow money or issue bonds on the faith and credit of the town of Queensbury in the amount of $100,000 for the purpose named in said act, will be submitted to the taxable electors of the town of Queensbury, qualified to vote for town-officers, whose names appear on the last general-assessment rolls of said town as having been assessed for real and personal property; which question will be submitted to said qualified taxable electors at a special election; which special election will be held at Union Hall, in the village of Glenn's Falls, on the 11th day of June next, 1867, that time and place having been designated for holding such special election by the undersigned board of auditors of said town; the polls of which election will be kept open from 9 a. m. until 6 p. m. of that day.

Dated Queensbury, the 18th day of May, 1867.

A. W. MORGAN, *Supervisor.*
D. B. KETCHUM, *Town-Clerk.*
CARLOS MORGAN,
ROBERT STEWART,
LYMAN JENKINS,
GEO. W. CHEENEY,
Justices of the Peace.

68 WARREN COUNTY, *ss:*

Daniel B. Ketchum, being duly sworn, says that, on the 24th and 25th days of May, 1867, he posted printed notices, of which the annexed is a copy, in twelve or more conspicuous places in the town of Queensbury, to wit: One at Van Dusann's office, at the feeder-dam; one at the red school-house near Warren Ketchum's; 1 at the Clendon school-house; 1 at the L. Buckbee school-house; 1 at the Gurney school-house; 1 at Brown's hotel; 1 at Brown's store; 1 at the American Hotel; 1 at the post-office; 1 at the factory-store; 1 at Harrison's school-house; 1 at the white school-house near Mrs. Hanna's; 1 at the red school-house near the foot of French Mountain, on the Bay road.

D. B. KETCHUM.

Sworn before me June 10, 1867.

GEO. W. CHEENEY,
Justice of the Peace.

(Endorsed:) D. B. Ketchum. Oath. Filed June 10, 1867. D. B. Ketchum, town-clerk.

69 Also a statement of the result of an election held on the 11th day of June, 1867, in said town of Queensbury, and made by the inspectors of election, and filed in the town-clerk's office of said town, June 11, 1867. The same is as follows:

Statement of the result of an election held June 11th, 1867, in the town of Queensbury, in pursuance of an act (approved May 15, 1867,) to authorize the town of Queensbury, in the county of Warren, State of New York, to issue bonds to aid in the construction of a railroad from the village of Glen's Falls to intersect with the Rensselaer, Saratoga and Whitehall Railroad.

The whole number of votes cast was seven hundred and fifty-four, of which five hundred and forty-two were cast for the railroad, and two hundred and twelve were cast against the railroad. Majority for the railroad was three hundred and thirty.

C. M. GILCHRIST,
SAMUEL JENKINS,
GEORGE BROWN,
Inspectors of Election.

70 Also the bonds of the commissioners appointed by county judge of Warren County, and filed February 6, 1869, in the town-clerk's office, with the oaths of office of said commissioners, and the approval by the county judge of Warren County, filed at same time.

The following is a copy of the above-mentioned instruments, executed by one of the commissioners. Each of the other commissioners executed bonds, &c., similar in substance, which were approved by the county judge of Warren County:

[$1 I. R. S., cancelled.]

Know all men by these presents that we, William A. Wait, John Keenan, and Jeremiah W. Finch, of the village of Glens Falls, Warren County, New York, are held and firmly bound unto Alexander Robertson, supervisor of the town of Queensbury, and his successor or successors in office, in the penal sum of ten thousand dollars, for the which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this sixth day of February, 1869.

71 Whereas the above-bounden William A. Wait has been appointed by the county judge of Warren County one of the commissioners of the town of Queensbury, under and in pursuance of chapter 919 of the laws of 1867:

Now, therefore, the condition of this obligation is such, that if the above-bounden William A. Wait shall faithfully discharge his duties as such commissioner, and shall justly and honestly apply all moneys or bonds which shall come into his hands, as such commissioner, according to the true interest and meaning of said chapter 919 of the laws of 1867, then this obligation shall void; otherwise in full force.

W'M A. WAIT. [L. S.]
JOHN KEENAN. [L. S.]
J. W. FINCH. [L. S.]

WARREN COUNTY, *ss:*

On this 6th day of February, 1869, before me personally appeared William A. Wait, John Keenan, and Jeremiah W. Finch, to me known to be the same persons described in and who executed the foregoing instrument, and severally acknowledged that they executed the same.

E. D. HARRIS,
Notary Public.

72 WARREN COUNTY, *ss:*

John Keenan and Jeremiah W. Finch, being severally duly sworn, say, and each for himself says, that he is a freeholder and resident within this State; that he is worth the sum of twenty thousand dollars over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt from execution.

JOHN KEENAN.
J. W. FINCH.

Sworn before me February 6, 1869.

E. D. HARRIS,
Notary Public.

I hereby approve of the sureties in the foregoing bond. Feb'y 6, 1869.

S. BROWN,
County Judge of Warren County.

Filed February 6, 1869. D. B. Ketchum, town-clerk.

STATE OF NEW YORK,
County of Warren, ss:

I, William A. Wait, do solemnly swear that I will support the
73 Constitution of the United States and the constitution of the
State of New York, and that I will faithfully discharge the duties
of the office of commissioner of the town of Queensbury, under chapter
919 of the laws of 1867, according to the best of my ability.

W. A. WAIT.

Sworn before me February 6, 1869.

E. D. HARRIS,
Notary Public.

Filed February 6, 1869. D. B. Ketchum, town-clerk.

All of said records and papers were produced from the town-clerk's office of the town of Queensbury, and were a part of the record' and files of said office.

The counsel for the plaintiff also read in evidence the following affidavits of Hatfield, Culver, and De Long.

The same are as follows:

To the president and directors of the Glen's Falls Railroad Company:

GENTLEMEN: We have the road-bed graded from the Rensselaer &
Saratoga Railroad to and into Warren County, and have expended
74 one hundred and twenty-nine thousand two hundred & ninety-
eight ($129,298) dollars in the following items, viz:

For grading road-bed, &c	$36,888 93
Masonry & drain-pipe	5,392 55
Bridges & trestles	13,549 40
Fencing & materials	2,500 00
Rails, spikes, & chairs	46,165 00
Land & expenses, (besides donations)	4,152 65
Cross-ties delivered	3,386 00
Frogs and switches	654 00
Stationery, Gov't stamps, & telegraph	209 50
Engineering, &c	3,400 00
Superintending & incidentals	10,500 00
Laying track, &c	2,500 00

We are now entitled to the payments from the villages Fort Edward & Sandy Hill, and the town of Queensbury, according to the terms of the contract.

Sandy Hill, January 30, 1869.

S. A. HATFIELD.
I. B. CULVER.

STATE OF NEW YORK,
Washington County, ss:

I. B. Culver, of Jersey City, and State of New Jersey, and S. A.
Hatfield, of the city of New York, being duly sworn, each for
75 himself says that the foregoing statements are true, to the best
of their knowledge and belief.

S. A. HATFIELD.
I. B. CULVER.

Sworn to before me January 30, 1869.

L. H. NORTHRUP,
Notary Public, Wash. Co., N. Y.

STATE OF NEW YORK,
Warren County, Warren County, ss:

ZOPHER I. DELONG, being duly sworn, says that he is the treasurer of the Glen's Falls Railroad Company, and has been treasurer for more than one year last past; that more than the sum of one hundred thousand dollars has been subscribed, paid in, and paid over to Messrs. Culver and Hatfield for and towards the construction and building of said railroad; that said Culver and Hatfield, to wit, Isaac B. Culver and Samuel A. Hatfield, are the contractors for building said railroad.

Z. I. DELONG.

Sworn to before me Feb'y 6, 1869.

E. D. HARRIS,
Notary Public.

76 Also, a bond from the railroad corporation to the commissioners, dated February 5th, 1869, which is as follows:

[25-cent I. R. stamp, cancelled.]

Know all men by these presents that we, John Keenan, Jeremiah W. Finch, Leonard G. McDonald, Keyes P. Cool, Zopher I. DeLong, Isaac J. Davis, & Samuel Pruyn, of Glen's Falls, Warren County, New York; and William H. Miller, Guy W. Clark, and Charles Hughes, of Sandy Hill, Washington County, New York, are held and firmly bound unto William A. Wait, Halsey R. Wing, George Brown, Alexander Robertson, and Daniel Peck, commissioners of the town of Queensbury, under the provisions of chapter 919 of the laws of 1867, and their successors in office, in the sum of one hundred and twenty-five thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 5th day of February, eighteen hundred and sixty-nine.

77 Whereas the Glen's Falls Railroad Company have filed articles of association to build and operate a railroad from the village of Glen's Falls to the Saratoga and Whitehall Railroad, and has entered upon the construction of said road, its buildings, and necessary appurtenances, and the said railroad company is ready to furnish to the above-named commissioners satisfactory assurances that the sum of one hundred thousand has been subscribed and paid in and actually expended in the construction and building of the said the Glen's Falls Railroad, and said commissioners are about to issue the bonds of the said town of Queensbury for the sum of one hundred thousand dollars, donated by said town to said railroad company, and pay over the sum to said Railroad company, under the provisions of said chapter 919:

Now, therefore, the condition of the foregoing obligation is such, that if the said The Glen's Falls Railroad shall be completed and the said bonds or money so donated shall be expended for the completion

thereof, then this obligation shall be void; otherwise to continue
78 in full force and virtue.

JOHN KEENAN. [L. S.]
J. W. FINCH. [L. S.]
LEONARD G. McDONALD. [L. S.]
KEYES P. COOL. [L. S.]
Z. I. DE LONG. [L. S.]
ISAAC J. DAVIS. [L. S.]
SAMUEL PRUYN. [L. S.]
W'M H. MILLER. [L. S.]
GUY W. CLARK. [L. S.]
CHARLES HUGHES. [L. S.]

WARREN COUNTY, *ss:*

On this 5th day of February, 1869, before me personally came John Keenan, Jeremiah W. Finch, Leonard G. McDonald, Keyes P. Cool, Zopher I. De Long, Isaac J. Davis, Samu'l Pruyn, William H. Miller, Guy W. Clark, & Charles Hughes, to me known to be the same persons described in and who executed the foregoing instrument, and severally acknowledged that they executed the same.

E. D. HARRIS,
Notary Public.

WARREN COUNTY, *ss:*

John Keenan, Jeremiah W. Finch, William H. Miller, Samuel
79 Pruyn, and Leonard G. McDonald, five of the sureties named
in the foregoing instrument, being severally duly sworn, say, and each for himself says, that he is a freeholder and resident within this State, and is worth the sum of fifty thousand dollars over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt from execution.

JOHN KEENAN.
J. W. FINCH.
LEONARD G. McDONALD.
SAMUEL PRUYN.
W'M H. MILLER.

Sworn to before me this 5th day of February, 1869.

E. D. HARRIS,
Notary Public.

WILLIAM A. WAIT, on a further cross-examination by defendant's counsel, testified:

Hatfield and Culver, named in the above affidavits, were contractors
with the railroad company to build the railroad. Mr. De Long
80 was the treasurer of the railroad company. I was one of the
commissioners for the town of Queensbury. No money was received by the commissioners for or upon these instruments or coupons in question, or the bonds to which they were attached when issued. These coupons and the bonds to which they were attached were delivered by the commissioners directly to the railroad corporation. Mr. Culver was then one of the contractors to build the railroad.

On a further direct examination by plaintiff's counsel, he testified:

The commissioner took the receipt now shown me from the president of the railroad company. The said receipt was dated February 6th, 1869, and was read in evidence as follows:

[2-cent I. R. stamp, cancelled.]
$100,000.]

Received, Glen's Falls, Feb'y 6, 1869, of the commissioners of the town of Queensbury, under chapter 919 of the laws of 1867, the bonds of said town issued under said chapter, to the amount of one hundred thousand dollars, and numbered from one to one hundred and seventy-nine, both inclusive, which said bonds are received by the Glen's
81 Falls Railroad, being the donation from said town under said chapter, and they are received at par.

JOHN KEENAN,
Pres't G. F. R. R. Co.

It was here admitted that the plaintiff is a resident of the State of New Jersey.

Chapter 919 of the laws of 1867, of the State of New York were read in evidence from the printed laws of New York, and the same shall be deemed a part hereof.

The said witness further testified on the plaintiff's examination: The Glen's Falls Railroad is now completed. The same was completed and in operation on the 4th of July, 1869.

On a further cross-examination the witness testified: I do not know where the contract between the railroad company and Hatfield and Culver, for the building of the road by the latter, is.

Plaintiff rests.

The foregoing is all the evidence given in the case.

The counsel for the defendant insisted and asked the court to rule and decide that the plaintiff was not entitled to recover, and to nonsuit the plaintiff on the grounds:

82 First. The evidence did not establish any liability on the part of the defendant for or upon the instruments or coupons given in evidence.

Second. That the evidence did not establish that the commissioners were authorized by said chapter 919 of the laws of New York of 1867, to make or issue said coupons or instruments.

Third. That there is no evidence of any understanding or promise by the defendant to pay the amount mentioned in the coupons or instruments; that these instruments do not purport to be made or issued by or on behalf of the defendant; and that the defendant is not liable for or upon the same.

Fourth. That the defendant is not liable in an action at law for or upon the coupons or instruments; that the only remedy to enforce the payment by the defendant of the amount sought to be recovered, is to compel the amount to be assessed, collected, and paid over, as specified in the 4th section of said chapter 919.

Fifth. That the commissioners did not dispose of the bonds or raise money thereon at not less than par; that there was no money
83 received for or upon the same by the commissioners; that they, in violation of said chapter, delivered these coupons or instruments, and any bonds to which they were attached, to the railroad company, and did not raise any money upon the same.

Sixth. That the said law, chapter 919, is in violation of the constitution of the State of New York and of the United States, and is therefore invalid, and did not authorize the creation of any debt or obligation against or upon the defendant.

The court overruled said several objections and refused to nonsuit the plaintiff, to which several rulings and refusal to nonsuit the plaintiff the counsel for the defendant then and there duly excepted.

And thereupon the said court directed the jury to render a verdict in favor of the plaintiff against the defendant for the amount of said coupons or instruments, and interest; to which direction the counsel for the defendant then and there duly excepted.

84 And thereupon the jury, under and pursuant to the said direction of the court, rendered a verdict in favor of the plaintiff and against the defendant for the sum of $2,083.29.

And because none of the said exceptions so offered and made to the rulings and decisions of said judge do appear upon the record of said trial, therefore, on the prayer of the said defendant, by his counsel, the said judge hath settled, signed, and sealed this bill of exceptions, according to law and the practice of this court, the day and year above named.

L. B. WOODRUFF. [L. S.]

(Endorsed:) U. S. circuit court, northern district of N. Y. Isaac B. Culver vs. The Town of Queensbury. W. & J. D. Kernan, att'ys for def't, Utica, N. Y. Bill of exceptions. W. & J. D. Kernan, sol. for def't. Settled. Filed October 13, 1871.

85 Therefore it is considered that the said plaintiff do recover against the said defendant his said damages and costs, by the jurors aforesaid, in form aforesaid assessed, and also three hundred and seventy-eight dollars and twenty-one cents for his costs, by the court here adjudged, of increase to the said plaintiff, with his assent, which said damages and costs in the aggregate amount to two thousand four hundred and sixty-one dollars and fifty cents ($2,461.50.)

And said defendant in mercy, &c.

Judgment signed this 30th day of January, A. D. 1872.

CHARLES MASON, *Clerk.*

86 (Endorsed:) U. S. circuit court, northern district of New York. Isaac B. Culver vs. The Town of Queensbury. Judgment record. L. H. Northrop, pl'ff's att'y, Sandy Hill, N. Y. Damages $2,083,29; taxed costs, 378.21—$2,461.50. Filed January 30, 1872, 5 p. m.

87, 88 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Isaac B. Culver, plaintiff, and the town of Queensbury, defendant, a manifest error hath happened, to the great damage of the said The Town of Queensbury, as by its complaint appears:

89 We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the

same at Washington, on the first Monday of December, (1872,) next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, at the city of Washington, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] CHARLES MASON,
Clerk of the Circuit Court of the United States,
Northern District of New York.

Allowed by—

L. B. WOODRUFF,
Circuit Judge, 2d Circuit.

90 (Indorsed :) Supreme Court of the United States. The Town of Queensbury, pl'ff in error, ads. Isaac B. Culver, def't in error. Writ of error from U. S. Supreme Court to U. S. circuit court, north. dist. of N. Y. W. & J. D. Kernan, att'ys for pl'ff in error, Utica, N. Y. Filed February 13, 1872.

91 Supreme Court of the United States.

ISAAC B. CULVER
ag'st
THE TOWN OF QUEENSBURY.

Know all men by these presents that we, Charles M. Gilchrist, Duncan McGregor, & James Morgan, are held and firmly bound unto Isaac B. Culver in the sum of five hundred dollars, to be paid to the said Isaac B. Culver his executors or administrators ; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 30th day of January, 1872.

Whereas the above-named The Town of Queensbury hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled writ in favor of the said Isaac B. Culver and against the said The Town of Queensbury,
92 for two thousand four hundred & sixty-one dollars and fifty cents,
damages and costs, by the circuit court of the United States for the northern district of New York :

Now, therefore, the condition of this obligation is such, that if the above-named The Town of Queensbury shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void ; otherwise the same shall be and remain in full force and virtue.

CHARLES M. GILCHRIST. [L. S.]
DUNCAN McGREGOR. [L. S.]
JAMES MORGAN [L. S.]

Sealed and delivered in the presence of—

NORTHERN DISTRICT OF NEW YORK,
County of Warren, ss :

Charles M. Gilchrist, Duncan McGregor, & James Morgan, being duly & severally sworn, each for himself, says that he is a resident and free-

holder within said county and district, and is worth the sum of one thousand dollars over and above all his debts & liabilities of prop-
93 erty not exempt from levy and sale upon execution.

CHARLES M. GILCHRIST.
DUNCAN McGREGOR.
JAMES MORGAN.

Subscribed & sworn to before me this 5th day of February, 1872.

[SEAL.] E. T. JOHNSON,
Notary Public.

NORTHERN DISTRICT OF NEW YORK,
County of Warren, ss:

On this 5th day of February, 1872, personally appeared before me Charles M. Gilchrist, Duncan McGregor, & James Morgan, to me personally known to be the same persons described in & who signed the foregoing bond, & severally acknowledged the execution thereof.

[SEAL.] E. T. JOHNSON,
Notary Public.

94 (Endorsed:) Supreme Court of the United States. The Town of Queensbury, pl'ff in error, ads. Isaac B. Culver, def't in error. Bond.

I approve of the within bond, as to form and sufficiency, as security for costs. Dated this 10 day of February, 1872.

L. B. WOODRUFF,
Cir't Judge.

Filed February 13, 1872.

95 The United States of America to Isaac B. Culver, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December, (1872,) next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein The town of Queensbury is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, & why speedy justice should not be done to the parties in that behalf.

Witness the honorable Lewis B. Woodruff, judge of the circuit court of the United States for the northern district of New York, this 10th day of February, A. D. 1872.

L. B. WOODRUFF,
Circu't Judge.

96 NORTHERN DISTRICT OF NEW YORK,
County of Oneida, ss:

On this 7th day of March, A. D. 1872, personally appeared before me the subscriber, Thomas Higgison, and makes oath that he delivered a true copy of the within citation to L. H. Northrup, the attorney for the within-named Isaac B. Culver, in the within-mentioned action, and left such copy with the said Northrup, at Sandy Hill, in the county of Washington, and within said district, on the 14th day of February, A. D. 1872.

THOMAS HIGGISON,
Deputy U. S. Marshal.

Subscribed and sworn to before me this 7th day of March, A. D. 1872.
C. M. DENNISON,
U. S. Com'r, N. D. of N. Y.

(Indorsed:) U. S. circuit court, north. dist. of N. Y. The town of Queensbury, pl'ff in error, vs. Isaac B. Culver, def't in error. Citation to appear at a Supreme Court first Monday of December, A. D. 1872. W. & J. D. Kernan, att'y' for pl'ff in error, Utica, N. Y. Filed March 8, 1872.

97 UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles Mason, clerk of the circuit court of the United States of America for the northern district of New York, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of Isaac B. Culver vs. The town of Queensbury.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Utica, this 5th day of June, A. D. 1872.

[SEAL.] CHARLES MASON, *Clerk.*

(Indorsement on cover:) No. 423. The Town of Queensbury, plaintiff in error, vs. Isaac B. Culver. N. New York C. C. U. S. Filed 19th September, 1872.

REC. 423—3

O

Grove & Bailey, Law Printers, 113 Genesee St., Utica.

Supreme Court of the United States.

SUPREME COURT OF THE UNITED STATES.

The Town of Queensbury, *Plaintiff in Error,* *v.* Isaac B. Culver, *Defendant in Error.*	

Statement, Points and Brief for Plaintiff in Error.

The plaintiff in error is one of the towns of the county of Warren, in the State of New York.

The action is assumpsit, brought in the Circuit Court for the Northern District of New York, against the plaintiff in error, to recover upon certain instruments called interest warrants, which are set out in the declaration. (See same, fol. 6 to 42.)

The defendant pleaded non-assumpsit. (43.)

The case was tried in June, 1870, by Judge Woodruff and a jury. The Court ordered a verdict against the defendant, and permitted the defendant to make a case and move upon the same for a new trial, with leave to either party to turn the case into a bill of exceptions. (45, 46.)

The motion for a new trial was heard and denied, and the bill of exceptions duly settled and sealed. (47 to 52.)

The bill of exceptions is found at folios 53 to 85.

The judgment is at folio 85.

The writ of error was allowed by Judge Woodruff. (87 to 90.)

Upon the trial the following facts were proved: In May, 1867, the Legislature of New York passed an Act known as Chapter 919, of the Laws of 1867. The same is found in the Laws of New York for 1867, vol. 2, p. 2294.

The first section provides for the appointment of five commissioners to carry the Act into effect. Sections 2, 3 and 4 are as follows:

§ 2. It shall be lawful, as hereinafter provided, for the said commissioners to borrow, on the faith and credit of the town of Queensbury, one hundred thousand dollars, for a term not exceeding ten years from the date thereof, at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefor, under their respective seals and the signature of the town clerk.

The bonds so to be executed may be in such sums, and payable at such places, not exceeding ten years, and in such form as the said commissioners shall deem expedient, and during the time they run.

§ 3. The said commissioners may dispose of such bonds to such persons or corporation, and upon such terms, as they shall deem most advantageous for the town, but not for less than par; and the money which shall be so raised shall be donated to such railroad corporation or association as has now or shall hereafter file articles of association to build and operate a railroad from the village of Glens Falls to the Saratoga & Whitehall Railroad, and shall be employed and used in the construction of the said railroad, its buildings and necessary appurtenances, and for no other purpose whatever.

For the completion of said road, and the expenditure of the sum so donated by said town, said corporation shall give full and adequate security to said commissioners, and for the more effectual enforcement of this act, the commissioners shall not pay over any money or bonds to the said railroad corporation until they have been furnished with satisfactory evidence that the sum of one hundred thousand dollars shall have been subscribed and paid in and actually expended in the construction and building of the said road; and this act shall not be construed so as to make the said town a party to this corporation; and the said town shall not be taxed hereafter for any appropriation required for said road besides the amount donated in the second and third sections of this act, but such additional amount shall be raised by the said corporation.

§ 4. The commissioners authorized by this act shall report annually to the Board of Supervisors of the county of Warren, at the commencement of their regular annual session in each year, the amount required to pay the principal and the interest on the bonds authorized to be issued under and by virtue of this act; and it shall be, and is hereby made, the duty of the Board of Supervisors, and they are hereby authorized and required, to cause to be assessed, levied and collected of the real and personal property of said town of Queensbury, at the same time and in the same manner as other taxes are assessed, levied and collected, such sum or sums of money as shall have been reported to the said Board of Supervisors by the said commissioners authorized by this act to be necessary, and the same, when collected, shall be paid to such commissioners, and by them be applied to the payment of the bonds, with the interest.

Section five declares that no money shall be borrowed or bonds issued until the expediency of the same shall have been submitted to the *taxable electors* of the town qualified to vote for town officers, and determined affirmatively by a majority of them at a special election which is provided for by this section.

The sixth and seventh sections it is believed do not materially bear upon the questions presented. The eighth declares that the railroad company to be formed may charge six cents per mile for passengers riding over the road; and the ninth and last declares that the act shall take effect immediately.

Evidence was given of the appointment of commissioners under the act. (54 to 57.) Also that an election was held at which the majority of those voting were in favor of the project. (60 to 70.)

The plaintiff proved that the signatures of three of the five commissioners and the signature of the town clerk to the instruments set out in the declaration were in the handwriting of such persons respectively; and said instruments were read in evidence. (Fol. 59.)

No money was raised by the Commissioners, upon the instruments in question or the bonds to which they were said to have been attached; but the bonds and interest warrants attached were delivered by the commissioners to the railroad corporation. (80 and 81.)

Culver, the plaintiff in the Court below, was one of the contractors with the railroad corporation for the construction of its road.

The testimony indicates that he and the contracting firm, of which he was a member, claimed the bonds and coupons, and received them from the railroad corporation on their contract. (80, 74, 75.)

Neither of the bonds issued by the commissioners was given in evidence, nor was there evidence of their substance or form.

The plaintiff was a resident of New Jersey. (81.)

The requests of the counsel for the defendant and the rulings of the Court and the exceptions thereto are found at fols. 81½ to 84.

I. The town of Queensbury is one of the political subdivisions of the State of New York. (3 Revised Statutes of New York, 1st Edition, pp. 58, 59. Same found in 5th Edition of Revised Statutes, vol. 1, pp. 221, 223.) It is a public corporation for certain special and limited purposes only.

1 *Revised Statutes of N. Y.*, (1 *Ed.*,) *p.* 337.
1 " " " " (*5th Ed.*,) *p.* 813.
Denton v. Jackson, 2 *Johnson Ch. R.*; *p.* 325.
Lorrillard v. Town of Monroe, 12 *N. Y. R.*, 393.
2 *Kent's Com.*, 275, *marg. paging.*

The town had no power or authority to incur indebtedness or issue securities to aid in constructing a railroad, unless expressly authorized to do so by statute.

See Revised Statutes, supra.
Thompson v. Lee County, 3 *Wallace*, 327.
Police Jury v. Britton, 15 *Wallace*, 566.
Marsh v. Fulton Co., 10 *Wallace*, 676.

II. Conceding the statute relied upon by the plaintiff below to be valid, he was not entitled to recover in this action, and the judgment should be reversed.

1. The action is assumpsit. The instruments on which it is brought do not purport to be and were not made by or in the name of the town. (See same set out in declaration, fol. 5 to 41; see Evidence, fol. 58, 59.) None of the alleged bonds were given in evidence, nor was there evidence of their form or substance. There was no evidence of any *promise* by the town to pay the amount sought to be recovered; and none from which a promise by the town could be implied. (See Test., fol. 53 to 82.) This question was made at the trial. (Fol. 82.)

2. The town is not liable in its corporate capacity to an action at law for the non-payment of the instruments

made and issued by the commissioners. The statute which authorized the money to be borrowed on the credit of the town and the instruments in question to be issued, prescribes how they shall be paid; and the holder must pursue the remedy prescribed. (Fol. 82.) Laws of N. Y., for 1867, Vol. 2, p. 2294, §§ 2 and 4.

Brady v. The Supervisors of N. Y., 2 *Sandf. S. C. R.*, 460.

Brady v. The Supervisors of N. Y., 10 *N. Y. R.*, 260.

Martin v. Board of Supervisors, 29 *N. Y.*, 645.

(1.) The statute authorizing these obligations confers no authority upon the town to raise money to pay them. It has no power whatever to raise money by taxation or to apply money in payment of the obligations authorized by this statute. The towns of the State of New York have no authority to impose taxes; none to raise or apply money except in the manner and for special purposes prescribed by statute.

No *duty* is imposed by this statute upon the town or its officers as to these obligations.

The statute prescribes that the *commissioners appointed by virtue of the act* "shall report annually to the Board of Supervisors of the County of Warren the amount required to pay the principal and interest on the bonds authorized to be issued under and by virtue of this act; and it shall be and is hereby made the duty of the Board of Supervisors, and they are hereby authorized and required to cause to be assessed, levied and collected of the real and personal property of the town, * * such sum or sums of money *as shall have been reported to the said Board of Supervisors by said commissioners* to be necessary; and the same, when collected, shall be paid to *such commissioners, and by them* be applied to the payment," &c. (See § 4, of

Statute, *Supra.*) The power and duty to raise the money to pay these obligations is by the statute authorizing them vested in others than the town or its officers.

(2.) The general rule of law is that where a statute creates a right or imposes a duty which did not exist before and prescribes a remedy, that remedy must be pursued.

Edwards v. Davis, 16 *Johnson's R.*, 281-285.
Almy v. Harris, 5 *Ib.* " " 175.
Stafford v. Ingersoll, 3 *Hill*, (*N. Y.*,) 39.

(3.) The remedy prescribed by the statute is adequate and the only one which can be made efficacious. If the commissioners or the Board of Supervisors omit to perform the duty enjoined upon them respectively, this gives no right of action against the town. It is not the duty of the town, nor have the town officers any power to compel them to act. The town is not liable to an action for their default.

Lorillard v. Town of Monroe, 11 *N. Y.*, 392.

(4.) The town has not omitted to perform any act or duty enjoined upon it; how then can it be held liable in this action at law?

III. In 1868, *before* the making of the instruments in question, an act of the Legislature of New York, precisely like the act under consideration, was held to be void by the Supreme Court of that State. This adjudication has never been reversed or questioned.

In the matter of Sweet v. Hulbert, 51 *Barbour*, 312.

This adjudication by the Supreme Court of New York, as to the validity of the local statute in question, is entitled to controlling weight in this Court. This Court will adopt and follow the decisions of the State Courts in the construction of their own constitutions, and statutes—no question being involved of conflict with the constitution or laws of the United States.

Nesmeth v. Sheldon, 7 *Howard*, *U. S. R.*, 812–818.
Webster v. Cooper, 14 *Howard*, *U. S. R.*, 488–504.
Amey v. Mayor, *&c.*, 24 *Howard*, *U. S. R.*, 364.
Leffingwell v. Warren, 2 *Black*, 599.

There has been no adjudication by the Courts of the State of New York, that the Legislature has power to order money to be taken by taxation from the people of a locality and *donated* to a railroad corporation.

The farthest that the Courts of New York have gone in this direction is to hold that the Legislature had power to authorize municipal corporations to become owners of stock in a railroad corporation, and to incur indebtedness and impose taxes to pay for the same. (See *Bank of Rome v. The Village of Rome*, 18 *N. Y.*, *p.* 38.)

This is the utmot limits to which the Courts of New York have gone; and the subsequent decisions of the Court of Appeals clearly indicate that it concurs in the adjudication in *Sweet v. Hulbert*, (51 *Barbour*, *Supra*,) that the act under consideration is invalid. (See *People ex rel. The Dunkirk*, *&c.*, *Railroad Co. v. J. Elliott Batchellor*, *Supervisor*, *&c.*, recently decided, in the Court of Appeals of N. Y. Albany Law Journal of August 23, 1873, Vol. 8, No. 8, p. 120—.)

IV. The act of the Legislature in question is void.

1. The act is unauthorized by the constitution of the State of New York. By the constitution, the *Legislative* power of the State only is vested in the Senate and

Assembly. (Constitution of 1846, Article III, § 1.) This power does not authorize property to be taken from the owner and donated to another by legislative enactment. Without reference to express constitutional restrictions, such an enactment is void.

As early as 1792, the Supreme Court of South Carolina, in the case of *Bowman v. Middleton*, (1 *Bay.*, 252,) held an act of the colonial legislature void, as being against common right and the principles of *magna charta*, because it took the freehold from one and vested it in another.

In *Calder v. Bull*, (3 *Dallas*, 386,) *Chase, J.* says: "I cannot subscribe to the omnipotence of a State legislature, or that it is absolute and without control, although its authority should not be expressly restrained by the constitution or fundamental law of the State;" and he further says that an enactment by a State legislature that takes property from A and gives it to B is void.

The legislature have not power to confirm proceedings in insolvency had before a person claiming to act as judge of insolvency, but with no title to the office. (*Denny v. Mattoon*, 2 *Allen's Mass. R.* 361.)

Nor can the legislature grant a new trial or direct the Court to order it. (*DeChastellux v. Fairchild*, 15 *Penn., p.* 18; *State v. Fleming*, 7 *Humphrey*, 152.)

To the same effect is the reasoning of Comstock, J., in the Court of Appeals of New York, in *Wynehamer v. The People*, 13 *N. Y. R.*, 390, 391, *&c.; Taylor v Porter*, 4 *Hill*, 144, *per Bronson, J.*

Mr. Justice Story says in *Wilkinson v. Leland*, 2 *Peter's U. S. R.*, 657, "We know of no case in which a legislative act to transfer the property of A to B, without his consent, has ever been held a constitutional exercise of legislative power in any State in the Union. On the contrary, it has been constantly resisted as inconsistent with just principles by every judicial tribunal in which it has been attempted to be enforced." (See also *Bradshaw v. Rogers*, 20 *Johnson's N. Y. R.*, 103.)

The grant of the *legislative* power in a free State confers no such authority upon the legislature.

2. The act is in violation of express provisions of the Constitution of the State of New York. This declares that "no member of this State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." (Article I, § 1.) It further declares that "no person shall be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation." (Section 6, of same Article.) And "when private property shall be taken for *any* public *use*, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a Court of Record, as shall be prescribed by law." (Section 7, of same Article.)

(1.) By the act in question, the Legislature directs $100,000 of the property owned by parties and situate in a specified locality, to be taken from them and *donated* to a private corporation. (Sections 2, 3 and 4 of the Act.)

(2.) It will hardly be claimed that this depriving the parties of their property is "by the law of the land" or "by due process of law."

To hold that the mere act of the Legislature, which deprives the citizen of rights or property, is "due process of law," or "the law of the land," renders these provisions of the constitution nugatory as against the arbitrary will of the Legislature; and is contrary to the settled meaning of these terms.

Wynehamer v. The People, 13 *N. Y.*, 392 *to* 396.

Taylor v. Porter, 4 *Hill, N. Y. R.*, 140, 145 *to* 148, *and cases cited.*

Norman v. Heist, 5 *Watts & Serg.*, 193, *Gibson, C. J.*

(3.) Conceding that this taking of property was for *public use*, there was no compensation and was to be none made. The law requires it to be a *donation*. This is in violation of express provisions of the constitution. (Article I, §§ 6 and 7, *supra.*) The State had not power to compel the owners of land, situate in this town, and necessary for the track of the proposed railroad, to *donate* the same to the company. (*Bradshaw v. Rodgers*, 20 *Johnson's N. Y. R.*. 103.)

Can it then be held that the Legislature has power to compel the *owners* of the land taken for the track to *donate* to the company the money necessary to pay for it?

3. This act of the Legislature cannot, it is respectfully submitted, be sustained as an exercise of the taxing power.

(1.) Taxes are moneys exacted from individuals and corporations by Government for public *use;* for the *use* of the State.

Burril's Law Dictionary defines a tax to be "a rate or sum of money assessed on the person of a citizen by Government for the *use* of the Nation or State." 2 *Burril's Law Dictionary*, 509.

"Tax.—A rate or sum of money assessed on the person or property of a citizen by Government for the *use* of the Nation or State."—*Webster's Dic.*

Johnson defines *public* as "belonging to a State or Nation."

"The word taxes means burdens, charges or impositions put or set upon persons or property for *public use.*" In the matter of the Mayor, &c., of New York, 11 *Johnson's N. Y. R.*, 77, 80.

It is believed that all the adjudications are to the effect that a public use is essential to the validity of a tax, and that a law directing a tax for any other than a public use is void.

Sharpliss v. Mayor, 21 *Penn.*, 167.

People ex rel. v. The Township Board of Salem, 9 *Am. Law Journal*, 487, *and cases cited.*

See also Allen v. Inhabitants of Jay, Sup. Court of Maine; reported, Am. Law Reg., (N. S.) vol. 12, *p.* 481, *and note to same by Redfield.*

(2.) The money which the act in question directs to be levied and collected from owners of property in the town of Queensbury, is not for *public use*, within the legal signification of these terms.

It is not to be paid into the treasury of the State, or to any State officer. It is not to be applied to the construction of any work owned by the State or any political division thereof, or in which either has any legal interest.

By the terms of the act the money is to be taken from the owners of property in a locality and donated to a *private* corporation.

a. That the donee is a *private* corporation cannot be successfully disputed. It is to be composed of stockholders, and the railroad to be constructed is to be operated for their individual profit. (*Ang. and Ames* on *Corporations*, §§ 30 *to* 36. *Bank of U. S. v. Planters Bank of Ga.*, 9 *Wheaton*, 904. *Bonaparte v. Camden & Amb. RR. Co.*, 1 *Baldwin's C. C. R.*, 222. *State Bank of Ohio v. Knoop*, 16 *Howard*, 380, 381, *per McLean, J.*

b. The road to be constructed by the corporation is not a *public highway.*

The road and its appurtenances are private not public property. The State has no power to deprive the corporation of this property.

The corporation has a vested right, by virtue of the act in question, if it be valid, to expel any person from the road who will not pay six cents per mile for riding in the cars of the corporation thereon. (Sec. 8 of the act.)

The business of this corporation is to be that of a *common carrier* of persons and property, for hire. As such, it is liable at common law to certain duties and responsibilities, and doubtless may be subjected by statute to others. But its road is *private* property, and its business is *private*, and to be carried on for the private gain of its stockholders.

Prot. Society v. Auburn &c. RR. Co., 3 *Hill*, 567 *and* 569, 570, *per Nelson, C. J.*

Williams v. N. Y. Cent. RR., 16 *N. Y. R.*, *p.* 97 *and* 104, *&c.*

c. The occupation of an inn-keeper is in the nature of a public employment. He is bound to receive all travelers who apply peaceably to be received as guests, so long as he has room; and he is an insurer of the property of the guest.

Rix v. Jones, 7 *C. & P.*, 213.

Edwards on Bailments, 408.

6 *Term R.*, *p.* 17, *per Lord Kenyon.*

Wilkins v. Earl, 44 *N. Y. R.*, 172.

Public inns are necessary for the accommodation of the public. But the Legislature has not power to order money to be levied upon the inhabitants of a locality and donated to a company, to aid them in the erection and maintenance of an inn.

It may be that it is for the public good that a railroad or factory be constructed and operated.

Such enterprises, although carried on by individuals or corporations, may enhance the value of property and may tend to general prosperity. But this does not authorize the Legislature, under the guise of an exercise of the taxing power, to compel citizens who are not regarded as public spirited to donate a portion of their property to individuals or corporations who propose to construct such works. There is a wide difference between exacting money from the citizen for *the use* of the State or a political division of it, and commanding him by legislative enactment to donate to another individual or to a private corporation money to aid in constructing a work to be owned and operated by them for their private gain. This may be for the *public good*, but it is not taking the money for public *use*.

d. The fact that the Legislature, by virtue of the right of eminent domain, has power to authorize a railroad corporation to take land necessary for the construction of its road on making compensation therefor to the owner, does not aid the argument in favor of the validity of the law in question. An act of the Legislature requiring the owner to donate the land, or authorizing the company to take it without making compensation, would be void.

Bloodgood v. Sch. & T. R. R. Co., 18 *Wend.*, 9.
9 *Am. Law Reg.*, *Supra*, *p.* 492.
State Bank of Ohio v. Knoop, *p.* 391, *per McLean.*

(3.) It is respectfully submitted that the constitution of New York protects the citizens from legislative enactments like that in question. If not, the minority hold their property at the will of the majority.

V. The bonds and coupons were disposed of by the commissioners in violation of the act of the Legislature, and therefore the plaintiff cannot recover. By the act, the commissioners were required to dispose of the bonds for money at not *less than par*, and pay over the money to the company to aid in constructing the road. (§ 3 of the Act.) The commissioners raised no money on the bonds—they were delivered to the railroad company, and by the latter given to the plaintiff and others who were contractors to build it.

There was no claim that the plaintiff was a bona fide holder, or that he occupied any better position than the railroad corporation, had the action been in its name.

Had there been any such claim made, the question would have been for the jury.

VI. The judgment below should be reversed.

FRANCIS KERNAN,
Counsel for the Plaintiff in error.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

TOWN OF QUEENSBURY, *Plaintiff in Error*,

vs.

ISAAC B. CULVER, *Defendant in Error.*

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

Error to the Circuit Court for the Northern District of New York.

This action was brought upon 30 coupons, which are set forth in the printed copy of the record, on pages 1 to 16, inclusive.

One of said coupons was in the words and figures following:

ing of the said road. And this act shall not be construed so as to make the said town a party to this corporation, and the said town shall not be taxed hereafter for any appropriation required for said road beside the amount donated in the second and third sections of this act, but such additional amount shall be raised by said corporation.

"§ 4. The commissioners authorized by this act shall report annually to the board of supervisors of the county of Warren, at the commencement of their regular annual session in each year, the amount required to pay the principal and the interest on the bonds authorized to be issued under and by virtue of this act; and it shall be and is hereby made the duty of the board of supervisors, and they are hereby authorized and required to cause to be assessed, levied and collected of the real and personal property of said town of Queensbury, at the same time, and in the same manner as other taxes are assessed, levied and collected, such sum or sums of money as shall have been reported to the said board of supervisors by the said commissioners authorized by this act to be necessary; and the same when collected, shall be paid to such commissioners, and by them be applied to the payment of the bond, with the interest.

"§ 5. No money shall be borrowed, or bonds issued, until the question whether or not it is expedient to borrow such money and issue such bonds, for the purpose named in this act, shall have been submitted to the taxable electors of the town of Queensbury, qualified to vote for town officers, and affirmatively determined by them. This question shall be submitted to the said qualified taxable electors, at a special election to be held at such time and place, within forty days after the passage of this act, as the board of town auditors shall designate, notice of which designation shall be publish-in the public papers of the village of Glen's Falls, for at least two weeks previous to the time appointed for such election, and also by printed notice put up in at least twelve conspicuous places in the said town. All legal electors of said town whose names shall appear on the last general assessment rolls of said town as having been assessed for real or personal property, and none others shall be entitled to vote at such election Three inspectors shall be appointed by the board of town auditors, to hold the poll and receive the votes. The ballots to be voted at such election shall be a paper ticket, on which shall be written or printed, or partly written and partly printed, the words, "For the Railroad," or the words, "Against the Railroad." The polls shall be kept open from nine o'clock in tbe forenoon until six o'clock in the afternoon, at which last time the inspectors shall proceed to canvass the votes and make triplicate returns, one of which returns shall be filed and recorded in the town clerk's book of the town of Queensbury, another of which shall be filed and recorded in the office of the county clerk of Warren county, and the third shall be handed over to the commissioners appointed by and under this act. The inspectors shall, upon such return, state whether or not a majority of votes shall have been cast "For the Railroad." If, by such return, it shall appear that a majority of votes shall have been cast "For the Railroad," then it shall be lawful for the commissioners above named to proceed to borrow money and issue bonds for the purpose and in the manner prescribed in the second and third sections of this act.

"§ 6 If it shall appear that the vote of the electors was "For the Railroad," then it shall be lawful for, and the directors of the said Railroad corporation are hereby required to open a book of subscription to the capital stock of the said railroad, in some appropriate place in the village of Glen's Falls, of which at least two weeks' notice shall be given in the public papers of the said village; which book of subscription shall be open for thirty days for subscribers thereto; and every elector of the said town shall have the privilege of subscribing towards the shares of the said capital stock, a sum at least equal to the amount of money which he would be required to pay on his assessment under the fourth section of this act; provided, however, that he shall subscribe for full shares, and not for aliquot parts thereof.

"§ 7. Before any commissioner shall enter upon the discharge of his duties, he shall execute to the Supervisor of the town of Queensbury a bond in the penal sum of ten thousand dollars, conditioned for the faithful discharge of his duties as such commissioner, and for the just and honest application by him of all moneys or bonds which shall come into his hands as such commissioner, according to the true intent and meaning of this act. The sufficiency of the said sureties shall be determined by the county judge of Warren county, or by a justice of the Supreme Court of the State of New York.

"§ 8. The said company so to be formed may charge the sum of not exceeding six cents per mile for passengers riding over said road.

"§ 9. This act shall take effect immediately"

The only exceptions on the trial were to the admission of evidence on page 20 of the printed record at folios 57 and 58, and to the refusal of the court to nonsuit the plaintiff, set forth on pages 29 and 30 at folios 82 and 83, and to the direction of the court to the jury to find a verdict in favor of the plaintiff for the amount of the coupons.

POINTS

I. Papers filed in a town clerk's office in pursuance of law, and produced from the files of the office, prove themselves.

Van Bergen v. Bradley, 36 N.Y. 316, 318.

No objection was taken on the trial to any of the documentary evidence given on the part of plaintiff.

An objection that if taken on the trial could have been obviated by proof, cannot be taken for the first time on a motion for a new trial or on a writ of error.

Newton *v.* Harris, 6 N.Y., 345.
Van Bergen *v.* Bradley, 36 N.Y., 317.
Jencks *v.* Smith, 1 N. Y., 90.

II. At folios 57 and 58 the defendant objected to proof that Peck was acting as president of the board of trustees of the village of Glen's Falls, "on the ground that the fact could not be proved by parol evidence; and that the election and appointment of Peck should be proved by the proceedings electing and appointing him."

The court overruled the objection and admitted the evidence, and defendant excepted.

At folio 58 the defendant made the same objection to proof that Robertson was acting as supervisor of the town of Queensbury, on the same ground.

The court overruled the objection, and defendant excepted.

The defendant objected to proof at folio 58, that Ketchum was acting as town clerk of said town "on the ground that evidence that he acted was not sufficient; and that it should be proved by competent evidence that he was duly elected or appointed." The court overruled, and defendant excepted.

Proof of reputation and acting as an officer is enough.

Wilcox *v.* Smith, 5 Wend., 231.
King *v.* Grant, 7 Wend., 341.
McCoy *v.* Curtice, 9 Wend., 17.
Benson *v.* Brown, 10 Wend., 254, 258.
Blatchley *v.* Moshet, 15 Wend., 215, 218.

In addition to the proofs at folios 57 and 58 the plaintiff proved at pages 24, 25 and 26 their oaths of office and their official bonds as commissioners of the town of Queensbury, which bonds recite their office as president, supervisor and town clerk respectively. To this evidence there was no objection or exception.

This proof was of itself sufficient evidence of their appointment and election.

III. At folio 82 of the printed record defendant moved for a non-suit upon the grounds:

"First, The evidence did not establish any liability on the part of the defendant for or upon the instruments or coupons given in the evidence

"Second, That the evidence did not establish that the commissioners were authorized by said chapter 919 of the laws of New York of 1867, to make or issue said coupons or instruments.

"Third, That there is no evidence of any understanding or promise by the defendant to pay the amount mentioned in the coupons or instruments; that these instruments do not purport to be made or issued by or on behalf of the defendants, and that the defendant is not liable for or upon the same.

"Fourth, That the defendant is not liable in an action at law for or upon the coupons or instruments; that the only remedy to enforce the payment by the defendant of the amount sought to be recovered is to compel the amount to be assessed, collected and paid over as specified in the fourth section of said chapter 919.

".Fifth, That the commissioners did not dispose of the bonds or raise money thereon at not less than par; that there was no money received for or upon the same by the commissioners; that they, in violation of said chapter, delivered these coupons or instruments, and any bonds to which they were attached, to the railroad company, and did not raise any money upon the same.

"Sixth, That the said law, chapter 919, is in violation of the constitution of the State of New York, and of the United States, and is therefore invalid, and did not authorize the creation of any debt or obligation against or upon the defendant."

The first, second, third and fourth grounds may be considered together. Plaintiff proved the election under the law, the certificate of the inspectors of election that a majority of the votes were cast "For the Railroad ;" the petition of twelve freeholders to the county judge of Warren county for the appointment of commissioners ; the order appointing commissioners ; the oaths of officer of all the commissioners and their bonds and the approval of the bonds. That all the conditions precedent on the part of the railroad were performed ; the proof to the commissioners that $100,000 had been subscribed and paid in, and more than $100,000 had been actually expended in the construction of the railroad, the satisfactory security given by the railroad company for the completion of the railroad, and that the railroad was completed and in actual operation before any of the bonds or coupons became due ; the meeting of all the commissioners; the issuing of the bonds with coupons attached.

Plaintiff proved all the matters required by the law to be done before the issuing of the bonds by the commissioners. The bonds were to be issued "in such form as the commissioners shall deem expedient." (See section 2) The commissioners had determined the form of the bonds, and a part of the bonds were the coupons.

The coupons on which this action is brought are commercial paper.

Mercer County *v.* Hacket, 1 Wall., 95.
Gelpcke *v.* City of Dubuque, 1 Wall. 176.
Thompson *v.* Lee County, 3 Wall., 327.
White *v.* Vermont and Massachusetts Railroad Company, 21 How., 575.
City of Lexington *v.* Butler, 14 Wall., 295.

The plaintiff is a bona fide holder for value before maturity and without notice of any defect of or defense to the coupons.

They are presumed to have been received by plaintiff before maturity and for value and without notice.

Goodman *v.* Simonds, 20 How., 343.
Bronson *et al.* *v.* La Crosse and Milwaukee Railroad Company *et al.*, 2 Wall., 283.
City of Lexington *v.* Butler, 14 Wall., 282 295.

Coupons payable to bearer pass by delivery. A purchaser of them in good faith is unaffected by want of title in the vendor.

The burden of proof on a question of such faith lies on the party who assails the possession

Murray *v.* Lardner, 2 Wall, 110.

If coupons are sought to be impeached they must be impeached by specific allegations distinctly proved.

Bronson *et al*, *v.* LaCrosse and Milwaukie Railroad Company *et al.*, 2 Wall., 283.

As to the fifth ground :

The intent of the statute is to control ; the plain intention of the legislature is to be carried out ; and a statute is to be so construed as to carry out that intention, even if it be contrary to the letter of the statute.

Holmes *v.* Carley, 31 N. Y., 289.
The People, *ex rel.*, Jackson *v.* Potter 47 N. Y. R., 379.

It is evident that the intention of the legislature was that if the tax-payers of the town of Queensbury should vote "For the Railroad," and the railroad company should expend $100,000 toward building the railroad and should give ample and satisfactory security for the completion of the road, that the railroad company should have the benefit of $100,000 of the bonds of the town of Queensbury to aid in completing the railroad.

The railroad company have had the full benefit of all the bonds, and the intent and object of the law has been accomplished. The spirit of the law has been carried into effect.

That the bonds were not sold for cash is no defense to a *bona fide* holder.

Mercer *v.* Hacket, 1 Wall., 83.
Rogers *v.* Burlington, 3 Wall., 667, 668.

Nor that the power to execute bonds or coupons was not properly executed.

Rogers *v.* Burlington, 3 Wall., 654.

Nor any defects in preliminary proceedings.

Mercer County *v.* Hacket, 1 Wall., 83.
Van Hostrup *v.* Madison City, 1 Wall.,299
City of Lexington *v.* Butler, 14 Wall., 295

Nor if fraudulently issued.

Mercer County *v.* Hacket, 1 Wall., 96.
Grand Chute *v.* Winegar, 15 Wall., 355

Nor if stolen by plaintiff's vendor.

Turnbull *v.* Bowyer *et al.*, 40 N. Y., 456

But by section 3, the commissioners had the right to pay the bonds directly to the railroad company. By that section the commissioners were forbidden to "pay over any money or bonds to the said railroad corporation until they have been furnished with satisfactory evidence that the sum of $100,000 shall have been subscribed, and paid in and actually expended," &c. Thus plainly showing the intent of the legislature, that upon the performance of all the conditions precedent by the railroad company, the commissioners should pay over to said railroad company $100,000 in money or bonds.

The act in question is a valid and constitutional law. It is not claimed to be in violation of any express provision of the constitution of the State of New York. By the decisions of the highest court of the State of New York the legislature of that State had the power to enact this law.

Starin *v.* Gena, 23 N. Y. R., 439.
Bank of Rome *v.* The Village of Rome, 18 N. Y. R., 438.
The Town of Guildford *v.* The Board of Supervisors of Chenango county, *et al.*, 13 N. Y. R., 143.
The People *ex rel.* Griffin *v.* The Mayor, &c., of Brooklyn, 4 N. Y. R., 419.
Brewster *et al. v.* City of Syracuse, 19 N. Y. R., 116.
The Buffalo and N. Y. City Railroad *v.* Brainard *et al.*, 9 N. Y. R., 100.
People *v.* Draper, 15 N. Y. R., 532, 543.
People *v.* Mitchell, 35 N. Y. R., 551.
Wineheamer *v.* People, 13 N. Y. R., 378, 411, 438.
People *v.* Supervisors of Orange County, 17 N. Y. R., 235, 241.
Litchfield *v.* Vernon, 41 N. Y. R., 123.

In the last case, the Court of Appeals of New York say: "It is within the power of the legislature to impose a tax upon a locality for any purpose by it deemed proper, and this power is not restricted by the constitution."

The decisions of the highest court of a State, that an act of the legislature is not in conflict with a provision of its constitution, is conclusive upon this court.

Gut *v.* The State, 9 Wall., 35.
City *v.* Sampson, 9 Wall, 478.
Randall *v.* Bingham, 7 Wall. 523, 541.
Provident Institution *v.* Massachusetts, 6 Wall., 611, 630.

If coupons were valid when issued, no subsequent decision of the courts of New York can affect their validity.

Chicago *v.* Sheldon, 9 Wall., 50.
City *v.* Sampson, 9 Wall., 478
Gelpecke *v.* City of Dubuque, 1 Wall., 175
Lee County *v.* Rogers, 7 Wall, 181.
Mitchell *v.* Burlington, 4 Wall., 270, 275.

The power to pass laws to raise taxes in aid of railroads and for stock in such railroads has been repeatedly sanctioned by this court. Kennicutt v. Supervisors of Wayne County, and Olcutt v. Supervisors of Fon-Du-Lac County, and the Chicago, B. & Q R. R. Co. v. the County of Otoe, decided by this court at its last term. In these cases it is understood the court reviewed the former cases and reiterated the principles that such powers were inherent in legislative bodies, and involved no question of constitutional power.

In Olcutt v. Supervisors of Fon-Du-Lac County, and the Chicago, Burlington and Quincy R. R. Co. v. The County of Otoe, it was held that there was no distinction between a town subscribing for stock in a railroad and issuing bonds to pay for such stock, and a town donating money or bonds to aid in building a rail road.

In the cases last cited it was further held that rail roads were public highways, and therefore public uses. "Taxation for such uses has been immemorially imposed."

The judgment should be affirmed with costs and ten *per cent* damages.

HUGHES & NORTHUP,
Atty's for Deft in Error.

JOHN P. STOCKTON,
Of Counsel.

On ground that [illegible]

[illegible]

TRANSCRIPT OF RECORD

[illegible]

On ground [illegible]

[illegible]

TRANSCRIPT OF RECORD